APPEAL # 21-1720
TAX TYPE: PROPERTY TAX
TAX YEAR: 2021
DATE SIGNED: 3/1/2024
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

COUNTY-1 ASSESSOR, Petitioner, v. BOARD OF EQUALIZATION OF COUNTY-1, STATE OF UTAH, EX REL. PROPERTY OWNER, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 21-1720 Parcel No: ##### Tax Type: Property Tax Tax Year: 2021 Judge: Phan

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Michael J. Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, Deputy County Attorney, COUNTY-1
PETITIONER'S REP-2, Farmland Specialist, COUNTY-1
For Respondent: No One Appeared
For Ex rel. Party: EX REL PARTY REP-1, Attorney at Law
EX REL PARTY REP-2, Attorney at Law
EX REL PARTY REP-3, Owner PROPERTY OWNER

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 30, 2023, in accordance with Utah Code Ann. §59-2-1006 and §63G-4-201 et seq. Based upon the legal arguments,[1] evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

I. General Information About Property

1. The issue before the Tax Commission at the Formal Hearing is the Petitioner's ("County Assessor's") appeal of the Respondent's ("County Board of Equalization's") decision to grant the ex rel party's ("Property Owner's") application for assessment as greenbelt under the Farmland Assessment Act ("FAA") for tax year 2021.

2. The subject parcel is ##### acres in size. The parcel is extremely irregular in shape. Portions of the subject parcel about ADDRESS-1 and portions of the subject parcel about an apartment complex. ##### acres on the subject property are irrigated and ##### acres are not irrigated.

3. There is a fence across the property that separates ##### acres on the south side of the parcel from the ##### acres on the north. The land on the south side is adjacent to an apartment complex. Photographs show piles of dirt and construction debris dumped on the ##### acres near the apartment complex. Aerial photos also show, in addition to the debris on the south side of the subject property, some areas where the soil appears to be white and has no vegetation. Photographs show no fencing between the ##### acres on the south end of the subject parcel and the apartment complex and fencing that separates these ##### acres on the south side of the property from the rest of the property on the north side.

4. The County has classified the property as Irrigated IV land. For land in COUNTY-1 with this classification, the County's representative testified at the hearing that to qualify for greenbelt assessment as graze land the production requirement is 5.21 AUMs per acre and for the entire ##### acres to qualify the production requirement would be ##### AUMs. The Property Owner argued that because only ##### acres were irrigated, the AUM calculation

[1] The Property Owner had submitted a Bench Memorandum on DATE. The County submitted its Response to the Memorandum on DATE and the Property Owner submitted a Reply on DATE.

should be ##### AUMs, with ##### for the irrigated portion and ##### for the nonirrigated portion.

5. The subject parcel had been removed from greenbelt assessment under the FAA in 2016. Sometime on or around DATE, the Property Owner submitted an Application for Assessment and Taxation of Agricultural Land to the County Assessor's Office, to have the subject property placed back into greenbelt under the FAA starting in tax year 2021. The County Assessor's Office issued a letter to the Property Owner on DATE denying the application. The letter stated, "The parcel is ##### acres and only ##### acres has had any cattle on it in the past 2 years. In order to qualify the entire acreage would need to be in production." The letter explained how the decision could be appealed to the County Board of Equalization.

II. County Board of Equalization Proceeding

6. The Property Owner had filed an appeal of the County Assessor's decision to remove the subject property from greenbelt to the County Board of Equalization. On DATE, the Property Owner submitted to the County Board of Equalization an Application for Review By Board of Equalization of Farmland Assessment Act Status. The Application and documentation that the Property Owner provided with this application was forwarded to the Utah State Tax Commission as part of the County Board of Equalization Hearing record.[2] This record included among other items:

a) A Declaration, dated DATE, of EX REL PARTY REP-3, one of the owners of PROPERTY OWNER: In the Declaration EX REL PARTY REP-3 stated that BUSINESS-1, which has other parcels near or adjacent to the subject, irrigated the subject property and grazed their cattle on the subject. EX REL PARTY REP-3 stated in the Declaration, ¶8, "The BUSINESS-1 place anywhere from #####-##### head of cattle on the PROPERTY OWNER Property during the grazing period." At ¶10 of the Declaration he stated, "The BUSINESS-1' cattle will eat the grass down on the PROPERTY OWNER Property within 7-10 days, it varies, and the BUSINESS-1 do not allow the cattle to eat the grass all the way down to its roots, which discourages future growth. The BUSINESS-1 monitor grass growth and move the cattle among the PROPERTY OWNER Property. . ."

[2] Property Owner's Exhibit F. The Property Owner also submitted these documents individually as Property Owner's Exhibits A, B, C and D.

b) An earlier Declaration of EX REL PARTY REP-3, dated DATE: In that declaration EX REL PARTY REP-3 stated that "BUSINESS-1 continues to graze cattle, raise hay, and irrigate the PROPERTY OWNER Property today, as it has for decades with its other land, and it intends to continue to do so in the future."

c) A Statement of BUSINESS-1, dated April 30, 2021: BUSINESS-1 explained he was part of BUSINESS-1. and that "[l]ong before PROPERTY OWNER acquired the PROPERTY OWNER Property, BUSINESS-1 irrigated the PROPERTY OWNER Property to grow feed and graze cattle as part of the larger grazing area." He stated that BUSINESS-1 and PROPERTY OWNER have a "verbal year-to-year grazing lease agreement." In the statement BUSINESS-1 said, "after the grass has grown we turn approximately ##### head of cattle each year to rotationally graze the land around the BUSINESS-1 Property, BUSINESS-1 Property and PROPERTY OWNER Property for about four months or so until the cattle eat the grass down." In the Statement, BUSINESS-1 said that for each of the years 2019 and 2020 they had ##### head of cattle grazing on these three properties and they intended to do the same in 2021.

d) A later Declaration from BUSINESS-1, dated DATE: This declaration stated that BUSINESS-1 irrigated the PROPERTY OWNER Property "about every two weeks throughout the summer months." He also stated, "We clean the ditches and pay for other irrigation maintenance costs. After the grass has grown on the PROPERTY OWNER Property, we turn the full cattle herd, or approximately #####-##### head of cattle depending on the year, to graze the PROPERTY OWNER Property for 3-10 day terms until the cattle have eaten the grass down, and then we move them to a different pasture. . . . We rotate the cattle herd onto the PROPERTY OWNER Property about 2-4 times per year depending how the grass grows. . . . We use temporary electric fencing on the PROPERTY OWNER Property because it [is] cheaper than building and maintaining permanent fencing and gives us the flexibility to adjust the fencing and use it on other parcels when necessary.

e) A letter from BUSINESS-1 dated DATE: The letter specifically stated it was in reference to the subject property. In the letter BUSINESS-1 stated, "BUSINESS-1, specifically BUSINESS-1, has grazed cattle on the land and irrigated this parcel for decades. Recent construction in the area has not stopped what we use the land for, which is the same use on our other properties in the area, raising hay and grazing cattle."

f) Included with the application were photographs of cattle grazing on what appears to be the north side of the subject property, although it is not always clear the location of the

grazing and in some cases the cows were not on the subject property, but on neighboring BUSINESS-1 properties. There are dates listed on the bottom of the photograph. Several photographs indicate they were dated in DATE or DATE and several others indicate they were dated in DATE, DATE, or DATE. These photographs show grass and cows grazing. There were some photographs dated DATE at 8:13 PM. These appear to be taken about sunset and the County pointed out it would have already been dark by 8:13 PM on DATE. There were some photographs dated DATE and these show grass inside the fence to be significantly shorter than the grass outside the fence line. The package also included some satellite images, but they were undated.

g) An email with attachments from PERSON-1 of BUSINESS-2. was included, which was dated DATE and detailed work on an irrigation system on the subject property.

7. The County Board of Equalization issued a letter on DATE, stating that the application for greenbelt had been approved, but the letter provided no explanation as to the reasons for the approval in the letter. In the letter, the County Board of Equalization had stated only, "At the Board of Equalization meeting held on DATE, the Board approved your application for greenbelt eligibility for the parcel listed above." No representative for the County Board of Equalization, which is the Respondent in this matter, attended the Formal Hearing before the Tax Commission. There was no information presented to the Tax Commission at the Formal Hearing from the County Board of Equalization as to why the County Board of Equalization had reached this conclusion, no assurance provided to the Tax Commission that the County Board of Equalization had considered the applicable law or even an explanation of how the County Board of Equalization had calculated the required Animal Unit Months ("AUMs") and then how it was determined that the AUM requirement had been met for the subject property to be eligible for greenbelt assessment under the FAA.

III. Petitioner's Evidence

8. The County Assessor's Farmland Assessment Specialist testified at the Formal Hearing that the County has to classify the whole parcel as qualifying for greenbelt or not qualifying for greenbelt. PETITIONER'S REP-2 testified that based on her review and in her opinion, the ##### acres on the south side of the property had not been used for grazing for many years. She testified that this area was near an apartment complex and was unfenced from the apartment complex. She stated it was covered with weeds and debris piles consisting of dirt, asphalt and rebar wire. She testified that the whole ##### acre southern part of the property showed no signs of agricultural use. She testified that she had personally looked at this section of

property and taken photographs, which were submitted as evidence. Some of these photographs were dated DATE and supported her testimony that at the time she visited the property there was no indication of grazing on the property nearest the apartment complex. These photographs also showed that there was an interior fence on the subject parcel that separated the south side of the parcel from the north side of the parcel.[3] PETITIONER'S REP-2 also provided some photographs dated DATE and DATE.[4] PETITIONER'S REP-2 pointed out that these photographs showed old, dry grass and testified that they suggested that the property was not grazed in the prior year either. She stated there was no manure on this property and there was a dirt road and areas where the weeds were trampled down by tire tracks. She stated that people were parking on the property and provided photographs of trash left on the property. The County Assessor also provided aerial or satellite photographs of the subject property from DATE. These showed the debris and dirt piles, as well as some areas where the soil was white and there was no growth.[5]

9. PETITIONER'S REP-2, the County Assessor's witness, did acknowledge that for the remainder of the property, the ##### acres on the north side, there was some sporadic grazing over the years, but she stated it was her opinion that the Property Owner had not submitted enough information to establish how many cattle were on the property and the length of time the cattle were on the property, in order for her to calculate the AUMs.

10. The County Assessor also submitted as an exhibit a Declaration of BUSINESS-1, dated DATE.[6] This declaration was not submitted during the County Board of Equalization proceeding, as it was written after that hearing. In this Declaration, BUSINESS-1 stated that the declaration is in opposition to the request of PROPERTY OWNER. He stated in the Declaration, "In my view, the [subject property] does not qualify for Greenbelt status since at least 2015, when apartments were constructed on part of the original larger parcel . . . My understanding is that the investors and developers who own the [subject property] claim that it merits Greenbelt based on an oral agreement with me that my cattle may graze on the Property without cost or charge as I might desire." He stated that there is "no written lease" and he has "never paid rent or any charges or fees for grazing cattle on the [subject property]." He also stated, "A significant portion of the property is unfit for grazing because of the poor quality of the soil and lack of vegetation. Other portions of the [subject property] have been used for the accumulation of junk and debris left over from part of the original parcel being developed." The Declaration also stated:

[3] Petitioner's Exhibit 4, PDF 62-66.
[4] Petitioner's Exhibit 4, PDF 42-60.
[5] Petitioner's Exhibit 4, PDF 12-42.
[6] Petitioner's Exhibit 2.

> 11. Though there have been years during which my operation did graze cattle for seven to ten days during the year on the [subject property], it has not been every year, and it has been a burden for us to do so.
>
> 12. We have not grazed more than a single time in any given year on the [subject property], and there are years in the last ten that we have not grazed at all on the [subject property].
>
> 13. The lack of permanent fencing requires the installation of temporary fencing on those years when we would turn out some cattle on the [subject property] for a week or so, which is difficult to justify for the limited benefit to our operations.
>
> . . .
>
> 15. The [subject property] is not critical to our operations . . .
>
> 20. If the [subject property] were a more important part of our operations, and if we had a written long term lease, we would have installed more improvements at the irrigation ditch, we would mow and fertilize the vegetation on the Property to make it more productive between grazings, or clip and let it turn to mulch, and we would install permanent fencing. We have done none of those things.

11. The County Assessor also submitted as an exhibit the letter the County Assessor had submitted for the County Board of Equalization Hearing.[7] In that letter the County's Farmland Assessment Specialist, PETITIONER'S REP-2, stated, "Most of the photos provided by the owners are not parcel #####. . . I pass by this parcel at least once a week. I am very familiar with this parcel . . . I have spoken with the owners on multiple occasions to explain to them that half of the property is not being used at all and the other half is sporadic in agricultural use. . . Parcel ##### is not being actively devoted to agricultural production and does not meet the minimum requirement."

IV. <u>Ex rel. Party-Property Owner's Evidence</u>

12. The Property Owner submitted at the hearing the evidence that had been included as part of the Application process to the County Board of Equalization for greenbelt assessment.[8] The Property Owner specifically pointed to the DATE Statement from BUSINESS-1,[9] the DATE Declaration from BUSINESS-1[10] and the DATE letter from BUSINESS-1.[11] Each of these documents are discussed above in detail.

13. At the hearing, the witness for the Property Owner testified that the soil quality in some areas of the south side of the property was poor and there was not much growth on these areas. The Property Owner's witness testified that some of the south area was not irrigated.

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[7] Petitioner's Exhibit 1.
[8] Property Owner's Exhibit F
[9] Property Owner's Exhibit A.
[10] Property Owner's Exhibit B.
[11] Property Owner's Exhibit C.

14. The Property Owner also submitted photographs of the subject parcel.[12] EX REL PARTY REP-3, managing member of PROPERTY OWNER, testified at the hearing that he had taken the photographs. Each of the photographs were labeled with a date and time and EX REL PARTY REP-3 testified that would be the date he had taken the photographs, although there were some problems with the time. Three photographs dated DATE showed ##### to ##### cows grazing in the north part of the subject property. There was a photograph dated DATE that showed there had been some grazing because the grass inside the fence was shorter than outside the fence. There was a photograph dated DATE, 11:50 that showed ##### to ##### cows grazing on the north portion of the property. EX REL PARTY REP-3 provided a Google Earth Image, which he testified had been taken on DATE and it also showed ##### to ##### cows on the subject property.

15. At the hearing, the Property Owner explained that they had calculated that the subject property needed only ##### AUM to qualify because only ##### acres were irrigated and the other ##### were not. The Property Owner had calculated ##### AUMs for the irrigated acreage and ##### AUMs for the unirrigated acreage. The Property Owner pointed out that the DATE photographs showed cows on the property for 11 days. The Property Owner pointed out that the County Board of Equalization had made the determination that the subject property qualified for greenbelt assessment.

V. Tax Commission Evidence Conclusions

16. The Petitioner, County Assessor, has provided as evidence photographs which support the contention that the south ##### acres of the subject parcel had not been used for grazing for many years and that it was fenced off from the north portion of the subject parcel. There was no evidence from the Property Owner that refuted this position. Therefore, the County Assessor has established that there was no grazing on the ##### acres on the south end of the property. However, the County Assessor had argued that there had to be grazing on these ##### acres for the entire parcel to qualify. This is contrary to the law as discussed more below. The entire subject parcel could qualify if there was sufficient production from the north section of the property for the entire parcel to qualify and the other requirements of the FAA were met.

17. Regarding whether production requirements had been met, evidence documents submitted by the parties were contradictory and neither party subpoenaed as witnesses the persons who were making the written statements. The County Assessor had submitted as evidence the Declaration of BUSINESS-1, dated DATE. The County had obtained this declaration after the

[12] Property Owner's Exhibit E.

County Board of Equalization had issued its decision. This DATE Declaration provided more specific information than the DATE Letter from BUSINESS-1 that the Property Owner had submitted. The Declaration was written nearly three years after the Letter. The DATE Letter said, "BUSINESS-1, specifically BUSINESS-1, has grazed cattle on the land and irrigated this parcel for decades. Recent construction in the area has not stopped what we use the land for, which is the same use on our other properties in the area, raising hay and grazing cattle." Nearly three years later, in the DATE Declaration, BUSINESS-1 made the following statements, "Though there have been years during which my operation did graze cattle for seven to ten days during the year on the [subject property], it has not been every year . . ." and "The [subject property] is not critical to our operations." Nothing in BUSINESS-1's written statements indicate the number of cattle grazed on the subject parcel or provide information specific to 2019 and 2020, the two years immediately preceding the tax year at issue.

18. The Property Owner submitted evidence that was directly contradictory to BUSINESS-1's Declaration in the Statement and Declaration from BUSINESS-1. BUSINESS-1 stated in his DATE Statement "we turn approximately ##### head of cattle each year to rotationally graze the land around the BUSINESS-1 Property, BUSINESS-1 Property and PROPERTY OWNER Property for about four months or so until the cattle eat the grass down." BUSINESS-1 also said in the Statement that for each of the years 2019 and 2020 they had ##### head of cattle grazing on these three properties and they intended to do the same in 2021. BUSINESS-1 changed his statement in his Declaration, dated DATE. In the Declaration BUSINESS-1 said, "After the grass has grown on the PROPERTY OWNER Property, we turn the full cattle herd, or approximately #####-##### head of cattle depending on the year, to graze the PROPERTY OWNER Property for 3-10 day terms until the cattle have eaten the grass down, and then we move them to a different pasture. . . We rotate the cattle herd onto the PROPERTY OWNER Property about 2-4 times per year depending how the grass grows . . ." Neither BUSINESS-1's Statement or Declaration provided information specific enough to establish that the AUM requirement had been met for any of the years 2019 through 2021. These statements provide only enough information to determine a range of use for grazing with the low end of the range insufficient to qualify the subject parcel and the high end sufficient to qualify the subject parcel. However, there was no evidence presented to establish how many cows grazed the property and the number of days the cows grazed to determine whether the AUM requirements had been met.

19. The Statement and Declaration of BUSINESS-1 were not supported by the photographs provided by the Property Owner and testimony at the hearing. Although the Property

Owner's photographs showed cattle on the north portion of the subject property at three different times in 2019, they did not show ##### to ##### cows, but instead possibly ##### to ##### cows. They did not show cows in 2020. The County Assessor's witness, PETITIONER'S REP-2, acknowledged only sporadic grazing on the north portion of the subject parcel. The Property Owner's witness only testified to seeing cows on the subject property on the dates he had taken his photographs, which had been DATE, DATE and the Google Earth Image, which he testified was from DATE. However, none of these images showed more than ##### cows on the subject property. It is difficult for the Tax Commission to weigh the evidence from the competing Declarations of BUSINESS-1 and BUSINESS-1. Had they been subpoenaed as witnesses, which the parties could have done, and been subject to cross examination, the Commission would have had a better opportunity to evaluate the testimony. However, as presented at the Formal Hearing, the testimony is not clear, and neither the Property Owner nor the County Board of Equalization has provided sufficient evidence to establish that that the subject property had met the AUM requirement or that the property was otherwise eligible for assessment as greenbelt under the FAA.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

> (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

The Utah Constitution Article XIII, Section 2, Subsection (3) provides that the Utah Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use.

The Utah Legislature adopted the Farmland Assessment Act ("FAA") and Utah Code Ann. §59-2-503 provides for the assessment of property as greenbelt under the FAA, as follows:

> (1) For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land:
> (a) is not less than five contiguous acres in area, except that land may be assessed on the basis of the value that the land has for agricultural use:
> (i) if:
> . . .
> (b) except as provided in Subsection (5) or (6):
> (i) is actively devoted to agricultural use; and
> (ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.
> (2) In determining whether land is actively devoted to agricultural use, production per acre for a given county or area and a given type of land shall be determined by using the first applicable of the following:

(a) production levels reported in the current publication of the Utah Agricultural Statistics;
(b) current crop budgets developed and published by Utah State University; and
(c) other acceptable standards of agricultural production designated by the commission by rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

. . . .
(5) (a) The commission or a county board of equalization may grant a waiver of the requirement that the land is actively devoted to agricultural use for the tax year for which the land is being assessed under this part upon:
(i) appeal by the owner; and
(ii) submission of proof that:
(A) the land was assessed on the basis of agricultural use for at least two years immediately preceding that tax year; and
(B) the failure to meet the agricultural production requirements for that tax year was due to no fault or act of the owner, purchaser, or lessee.
(b) As used in Subsection (5)(a), "fault" does not include:
(i) intentional planting of crops or trees which, because of the maturation period, do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the production levels required for land actively devoted to agricultural use; or
(ii) implementation of a bona fide range improvement program, crop rotation program, or other similar accepted cultural practices which do not give the owner, purchaser, or lessee a reasonable opportunity to satisfy the production levels required for land actively devoted to agricultural use.
. . .

Utah Code Ann. §59-2-502 provides definitions applicable to the FAA, as follows:

(1) "Actively devoted to agricultural use" means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre:
  (a) as determined under Section 59-2-503; and
  (b) for:
    (i) the given type of land; and
    (ii) the given county or area.
  . . .

(4) "Land in agricultural use" means:
  (a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:
    (i) forages and sod crops;
    (ii) grains and feed crops;
    (iii) livestock as defined in Section 59-2-102;[13]
    (iv) trees and fruits; or
    (v) vegetables, nursery, floral, and ornamental stock; or
  (b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program

[13] "Livestock" is defined at Utah Code Sec. 59-2-102(20) to mean "(a) a domestic animal; (b) a fish; (c) a fur-bearing animal; (d) a honeybee; or (e) poultry."

with an agency of the state or federal government.

. . .

In order for land to be eligible for assessment as greenbelt under the FAA, the property owner must submit an application pursuant to Utah Code §59-2-508 as follows:

> (1) If an owner of land eligible for assessment under this part wants the land to be assessed under this part, the owner shall submit an application to the county assessor of the county in which the land is located.
>
> (2) An application required by Subsection (1) shall:
> (a) be on a form:
> (i) approved by the commission; and
> (ii) provided to an owner:
> (A) by the county assessor; and
> (B) at the request of an owner;
> (b) provide for the reporting of information related to this part;
> (c) be submitted by:
> (i) May 1 of the tax year in which assessment under Subsection (1) is requested if the land was not assessed under this part in the year before the application is submitted; or (ii) by the date otherwise required by this part for land that prior to the application being submitted has been assessed under this part;
> (d) be signed by all of the owners of the land that under the application would be assessed under this part;
> (e) be accompanied by the prescribed fees made payable to the county recorder;
> (f) include a certification by an owner that the facts set forth in the application or signed statement are true;
> (g) include a statement that the application constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part; and
> (h) be recorded by the county recorder.
> (3) The application described in Subsection (2) constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part.
>
> (4) (a) If the county determines that an application that was timely filed is incomplete, the county shall:
> (i) notify the owner of the incomplete application; and
> (ii) allow the owner to complete the application within 30 days from the day on which the county provides notice to the owner.
> (b) An application that has not been completed within 30 days of the day of the notice described in Subsection (4)(a) shall be considered denied.
>
> (5) (a) Once the application described in Subsection (1) has been approved, the county may:
> (i) require, by written request of the county assessor, the owner to submit a new application or a signed statement that verifies that the land qualifies for assessment under this part; or

(ii) except as provided in Subsection (5)(b), require no additional signed statement or application for assessment under this part.

(b) A county shall require that an owner provide notice if land is withdrawn from this part:

(i) as provided in Section 59-2-506; or

(ii) for land that is subject to a conservation easement created in accordance with Section 59-2-506.5, as provided in Section 59-2-506.5.

(c) An owner shall submit an application or signed statement required under Subsection (5)(a) by the date specified in the written request of the county assessor for the application or signed statement.

(6) A certification under Subsection (2)(f) is considered as if made under oath and subject to the same penalties as provided by law for perjury.

(7) (a) All owners applying for participation under this part and all purchasers or lessees signing statements under Subsection (8) are considered to have given their consent to field audit and review by:

(i) the commission;

(ii) the county assessor; or

(iii) the commission and the county assessor.

(b) The consent described in Subsection (7)(a) is a condition to the acceptance of any application or signed statement.

(8) Any owner of land eligible for assessment under this part, because a purchaser or lessee actively devotes the land to agricultural use as required by Section 59-2-503, may qualify the land for assessment under this part by submitting, with the application described in Subsection (2), a signed statement from that purchaser or lessee certifying those facts that would be necessary to meet the requirements of Section 59-2-503 for assessment under this part.

Utah Code §59-2-516 provides that the time to file an appeal to the County Board of Equalization of a determination or denial made by the County Assessor regarding assessment under the FAA, is as follows:

Notwithstanding Section 59-2-1004 or 63G-4-301, the owner of land may appeal the determination or denial of a county assessor to the county board of equalization within 45 days after the day on which:

(1) the county assessor makes a determination under this part; or
(2) the county assessor's failure to make a determination results in the owner's request being considered denied under this part.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006(1) in pertinent part, below:

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission
    (a) by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board.

On an appeal before the Tax Commission from a decision issued by the County Board of Equalization, a party may submit new evidence and raise new issues that were not raised to the County Board of Equalization. See Utah Admin. Rule R861-1A-9(6) as follows:

> (a) The Commission shall consider the facts and evidence presented to the commission including facts and evidence presented by a party that was submitted to the county board.
> (b) A party may raise a new issue before the Commission.

The Utah Supreme Court in *Stichting Mayflower*, 6 P.3d 560, at 564, stated "We interpret taxation statutes like the FAA 'liberally in favor of the Taxpayer,'" quoting *Salt Lake County ex rel. County Bd. of Equalization v. Utah State Tax Comm'n ex rel. Kennecott Corp.*, 779 P.2d 1131, 1132 (Utah 1989). Based on this language from the Utah Supreme Court, the FAA is to be liberally construed in favor of the property owner, in accordance with relevant case law. However, the Tax Commission has previously concluded and stated in many appeals it reviews pursuant to Utah Code Ann. §59-2-1006 that in a proceeding before the Tax Commission, the burden of proof is generally only on the petitioner to support its position. The Commission cites to *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); and *Fraughton v. Tax Commission*, 2019 UT App 6, 438 P.3d 961 (Utah Ct. App. 2019). In most appeals, the Petitioner is the property owner. In this case the Petitioner is the County Assessor and the Property Owner is merely requesting that the decision issued by the County Board of Equalization be upheld. Therefore, it is the County Assessor in this matter that needs to show error in the decision issued by the County BOE and establish that the property should have been removed from greenbelt.

CONCLUSIONS OF LAW

1. In instances where there is an issue of statutory interpretation, the Utah Supreme Court has stated in *County Board of Equalization of Wasatch County v. Stitching Mayflower et al.*, 2000 UT 57, 6 P.3d 560, at 564 (2000), "We interpret taxation statutes like the FAA 'liberally in favor of the Taxpayer,'" quoting *Salt Lake County ex rel. County Bd. of Equalization v. Utah State Tax Comm'n ex rel. Kennecott Corp.*, 779 P.2d 1131, 1132 (Utah 1989). Based on this language from the Utah Supreme Court, if there is a question of statutory interpretation, the FAA is to be liberally construed in favor of the property owner, in accordance with relevant case law.

2. The burden of proof in proceedings brought before the Tax Commission pursuant to Utah Code Ann. §59-2-1006, is generally only on the petitioner to support its position. *See*

Nelson v. Bd. of Equalization of Salt Lake County, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d 652 (Utah 2000); and *Fraughton v. Tax Commission*, 2019 UT App 6, 438 P.3d 961 (Utah Ct. App. 2019). Because in this appeal the Petitioner is the County Assessor, and the Property Owner is merely requesting that the decision issued by the County Board of Equalization be upheld, it is the County Assessor that needs to show error in the decision issued by the County BOE and establish that the property should have been removed from greenbelt.

3. Either party may raise new issues or new evidence in a proceeding before the Utah State Tax Commission. *See* Utah Admin. Rule R861-1A-9(6).

4. The Utah Constitution and Utah Code Ann. §59-2-103(2) provides that "tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law." An exception to the fair market value standard is provided for property actively devoted to agricultural use. Utah Constitution Article XIII, Section 2, Subsection (3) provides that the Utah Legislature may provide by statute that land used for agricultural purposes be assessed based on its value for agricultural use. Based on this authorization, the Utah Legislature adopted the Farmland Assessment Act ("FAA").

5. Utah Code §59-2-503 requires that to qualify for greenbelt assessment under the FAA, land must be "actively devoted to agricultural use" and have "been actively devoted to agricultural use for at least two successive years immediately preceding the tax year" among other requirements. Utah Code Ann. §59-2-502(1) defines "actively devoted to agricultural use" to mean that "the land in agricultural use produces in excess of 50% of the average agricultural production per acre: (a) as determined under Section 59-2-503; and (b) for: (i) the given type of land; and (ii) the given county or area." In addition "land in agricultural use" is also statutorily defined at Utah Code §59-2-502(4)(a) to be "land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including: . . (iii) livestock . . ." Therefore, in order to be "actively devoted to agricultural use" the land must meet both the production requirements and be "devoted to" the raising of useful plants and animals "with a reasonable expectation of profit."

6. One issue raised by the County in this matter was that the Property Owner clearly had no expectation of profit from raising cattle on the subject property. The evidence supports that the Property Owner did not expect to profit from raising cattle on the subject property, as the Property Owner was not charging any rent for the lessee farmer's use of the property and the

Property Owner itself was not actively devoting the land to agricultural use. The Property Owner's representative argued that a property may still qualify for greenbelt assessment if a tenant using the property, rather than the property owner itself, had a reasonable expectation of profit and met the other requirements. The County Assessor's contention that the Property Owner itself must have a reasonable expectation of profit is not consistent with a plain reading of the Farmland Assessment Act, and the Commission must construe the statute in favor of the Property Owner. The definition of "land in agricultural use" in Utah Code Subsection 59-2-503(4) includes that requirement that "land [must be] devoted to the raising of useful plants and animals with a reasonable expectation of profit . . . ." The statute references a reasonable expectation of profit from the use of the land rather than an expectation of profit to the owner of the land. Furthermore, Utah Code Subsection 59-508(8) provides that "[a]ny owner of land eligible for assessment under this part, because a purchase or lessee actively devotes the land to agricultural use . . . may qualify the land for assessment under this part" if certain requirements are met. This subsection clarifies that property actively devoted to agricultural use by a tenant may qualify for greenbelt assessment if the requirements of the FAA are met.[14] Therefore, the County's argument is contrary to the plain language of the statute.[15]

7. The County Assessor had made the statement in its DATE decision to deny the greenbelt application that "[t]he parcel is ##### acres and only ##### acres has had any cattle on it in the past 2 years. In order to qualify the entire acreage would need to be in production." The County appeared to be arguing at the hearing that the subject property could not qualify because ##### acres were not used for agricultural purposes. In its Response to Bench Memorandum, pg. 1, the County clarified that its position was that "the Assessor does not agree that even half of the property was used for agricultural production." As support, the County pointed to the court's decision in *Salt Lake County ex rel. County Bd. of Equalization of Salt Lake County v. State Tax Commission of Utah ex rel. Bell Mountain Corporation*, 819 P.2d 776 (1991), in which the court stated, "We do not believe that it was the intent of the constitutional authorization in article 13,

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[14] See also *County Board of Equalization of Wasatch County v. Stitching Mayflower et al.* 2000 UT 57. AndAlso, in *Utah State Tax Commission, Initial Hearing Order Appeal 19-2564, pg. 7* (9/20/2020), the Utah State Tax Commission noted, "A property may still qualify for greenbelt assessment where the owner does not farm the property himself or herself, but leases it to a lessee, if the lessee actively devotes the property to agricultural use and meets production and other requirements." *See also Utah State Tax Commission, Initial Hearing Order Appeal 19-2267* (11/20/2020). These and other Tax Commission decisions are available for review in a redacted format at https://tax.utah.gov/commission-office/decisions.

[15] As noted by the Utah Supreme Court in *Steiner v. Tax Commission*, 2019 UT 47, at ¶58, "[a]s in all cases of statutory interpretation, we begin with the text." And in *Ivory Homes v. Tax Commission*, at 2011 UT 54, ¶21 the Court explained, "our plain language analysis is not so limited that we only inquire into individual words and subsections in isolation; our interpretation of a statute requires that each part or section be 'construed in connection with every other part or section so as to produce a harmonious whole.'"

section 3(2) and of the implementing statutes that tracts not in actual agricultural use could be bootstrapped onto a core of agricultural property and thereby spread the preferential tax assessment to a wide area."[16] However, in that case, which involved tax year 1986, the FAA assessment of seven separate parcels of land was at issue. The facts at issue in this matter are distinguishable from the facts in *Bell Mountain* because the land in *Bell Mountain* had never been part of a unit farm and the tax year at issue was prior to the statutory revisions to the FAA effective January 1, 1993, which changed the production requirements.[17] The Property Owner argued that the County's position was not supported by the statutory language and "the plain language of the Farmland Act refers to 'land,' which means [all] of the PROPERTY OWNER land, not a portion of the land as the Assessor argues."[18] The Property Owner argued that there is enough production to qualify the entire parcel, regardless that the southern portion was not grazed. The Property Owner's position is consistent with the Court's decision in *County Board of Equalization of Wasatch County v. Stitching Mayflower et al.*, 6 P.3d 560 (2000), which was decided after the 1993 revisions to the FAA. In *Stitching Mayflower*, the court affirmed that three separate parcels comprised one unit and grazing that occurred mostly on two of the parcels was sufficient to meet the AUM requirements for all three parcels combined. In the subject appeal, the issue is whether the land was "actively devoted to agricultural use" during the relevant period.

8. This appeal presents to the Tax Commission primarily questions of fact as to whether the land was "actively devoted to agricultural use" during 2021 and in the two prior years. In considering whether the land was "actively devoted to agricultural use," the Commission must consider both the production requirements[19] of the FAA and whether the property was "devoted to" the raising of useful plants and animals "with a reasonable expectation of profit." The Respondent in this appeal, the County Board of Equalization, did not appear at the Formal Hearing and there was no testimony as to how or why the County Board of Equalization concluded that the subject property had met the statutory requirements to be eligible for greenbelt assessment based on the record before the County Board of Equalization, which contained

[16] *Bell Mountain Corporation*, 819 P.2d 776, 779.

[17] In *Stichting Mayflower*, 6 P.3d 559, 563 (Utah 2000) the court explained, "For the 1992 tax year, the FAA allowed land to be greenbelted if the property (1) was five contiguous acres or more; (2) had a gross agricultural income of $1000 or more; (3) was 'actively devoted to agricultural use'; and (4) had been 'actively devoted to agricultural use for at least two successive years immediately preceding the tax year in issue.' Utah Code Ann. § 59-2-503(1) (1992)." As the court noted in *Stitching Mayflower*, at 564, "Beginning in 1993, the FAA has allowed land to be greenbelted if the property (1) is five contiguous acres or more; (2) is 'actively devoted to agricultural use,' meaning the land produces over 50% of its agricultural capacity; and (3) has been so used for the two years 'immediately preceding the tax year in issue.'"

[18] Property Owner's Bench Memorandum for Formal Hearing, pg.4.

[19] In discussing whether the "property satisfied the 50% production minimum" the Court in *Stitching Mayflower* at ¶23 stated, "This is an issue of fact."

documentation that was not conclusive. As the Utah Supreme Court had held in *Utah Railway Company v. Utah State Tax Commission*, 2000 UT 49, ¶8, "the Commission must have a sound evidentiary basis for its decision." Based on the exhibits and testimony submitted by the Petitioner and the ex rel. party at the Formal Hearing, the Commission does not have a sound evidentiary basis to find that the subject property is eligible for the favorable property tax treatment of greenbelt assessment pursuant to the FAA. Although *Utah Railway* was a property tax assessment case and did not involve the FAA, the court's decision in *Utah Railway* provides some guidance in this appeal. In *Utah Railway*, none of the parties presented the original assessment appraisal into evidence. The court acknowledged that that presumption of correctness was implied to the original assessment, but held, “That presumption does not arise, however, unless and until available evidence supporting the original property valuation is submitted to the Commission.” *Id*. at ¶9. In this appeal, the Tax Commission concludes, likewise, that the presumption that the County Board of Equalization's decision was correct has not arisen because there was no explanation from the County Board of Equalization, or any other party, to show how the County Board of Equalization had reached a decision to determine that the subject property qualified for greenbelt assessment. The Tax Commission simply has insufficient evidence before it upon which it could base a determination that the subject property qualified for greenbelt assessment.

Therefore, the County Assessor’s appeal should be granted, and the decision of the County Board of Equalization in this matter overturned.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission overturns the decision of the County Board of Equalization, in which the County Board approved the application for greenbelt for the subject property. The Commission finds the subject property was not eligible for greenbelt assessment based on the Property Owner's 2021 application and the greenbelt assessment should be removed from the property. It is so ordered.

DATED this _____ day of _____, 2024.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.